

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.537 OF 2005

Georges Beverages India Pvt.Ltd. .. Appellant
V/s
Joint Commissioner of Income Tax, Mumbai.. Respondents

Mr.A.K.Jasani for the Appellant.
Mr.A.Kotangale for the Respondents.

**CORAM : DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.**

DATE : 13th March, 2007.

P.C.:

1. Heard the learned Counsel for the parties. The above appeal pertains to the Assessment Year 1996-1997. The substantial questions of law sought to be raised in this Appeal read as under:-

i. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the penalty of Rs.41,40,000/- imposed by the Assessing Officer under the provisions of Section 271(1)(c) of the Income Tax Act, 1961?

ii. Whether on the facts and in the circumstances of the case the pre-condition for imposition of the penalty under sections 271(1)(c) of the Act namely that the Assessing Officer must be satisfied in the course of assessment proceedings is fulfilled in the case of the Appellant for levy of the penalty?

iii. Whether on the facts and in the circumstances of the case the finding of the Tribunal that the provisions of Section 271(1)(c) of the Act were attracted in the case of Appellant is perverse and/or contrary to material on record inasmuch as the explanation given by the Appellant were not found to be false or malafide?

iv. Assuming without admitting that provisions of section 271(1)(c) of the Act were attracted in the case of the Appellant than whether on the facts and circumstances of the case of the decision of the Tribunal confirming the penalty on the entire alleged Bottlers' support Expenses of Rs.80 lakhs is perverse and/or contrary to material on record inasmuch as

even before the commencement of assessment proceedings the Appellant (i) in the revised accounts which were audited had claimed Rs.23,12,527/- as Distribution related cost and, (ii) written back a sum of Rs.19,75,876/- in the accounts relating subsequent assessment year?

v. Whether on the facts and in the circumstances of the case of Tribunal was justified in law on holding that penalty under the provisions of Section 271(1)(c) of the Act, as it applied to the year under consideration, could be levied even in a case where the returned income is a loss and the final income which is assessed is also a loss, that is, in a case where as a result of additions and disallowances the returned loss is reduced and no positive income is assessed?

2. The learned Counsel for both the parties categorically state that the aforesaid questions of law involved in this Appeal are squarely covered by a decision of the Supreme Court in the case of **Virtual Soft Systems Ltd V/s.Commissioner of Income Tax - (2007) 289 ITR 83 (SC)**, in favour of the Assessee and against the Revenue. In view thereof, Appeal is allowed by answering the questions of law in favour of the Assessee and against the Revenue, and the order of the Income Tax Appellate Tribunal stands set aside.

(J.P.DEVADHAR, J.)

(DR.S.RADHAKRISHNAN, J.)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.389 OF 2007

The Commissioner of Income Tax, Mumbai .. Appellant
V/s
M/s.Vallabh Poly Plast International Ltd.. Respondent

Mr.A.Kotangale for the Appellant.
Mr.Ajay Singh for the Respondent.

**CORAM : DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.**

DATE : 13th March, 2007.

P.C.:

1. The learned Counsel for the Appellant seeks leave to withdraw this Appeal. Appeal is therefore allowed to be withdrawn and dismissed as such. Permissible Court fees be refunded to the Appellant as per the rules.

(J.P.DEVADHAR, J.)

(DR.S.RADHAKRISHNAN, J.)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL (LODG) NO.1405 OF 2005

The Commissioner of Income Tax, Mumbai .. Appellant
V/s
M/s.Triplast (Bombay) P.Ltd. .. Respondent

**WITH
INCOME TAX APPEAL (LODG) NO.1406 OF 2005**

The Commissioner of Income Tax, Mumbai .. Appellant
V/s
M/s.Triplast (Bombay) P.Ltd. .. Respondent

Mr.A.Kotangale for the Appellant.
Mr.S.G.Dalal & Mr.Harshad H.Gada for the Respondent.

**CORAM : DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.**

DATE : 13th March, 2007.

P.C.:

1. Heard the learned Counsel for the parties. The learned Counsel for the Appellants seeks leave to withdraw these Appeals. Both the Appeals are therefore allowed to be withdrawn and dismissed as such. Permissible Court fees be refunded to the Appellants as per the Rules.

2. In view of disposal of the aforesaid two Appeals, nothing further survives in the Notice of Motion No.3331/2005 and Notice of Motion No.3359/2005 in the respective Appeals. Hence, both the Notices of Motion also stand disposed of.

(J . P . DEVADHAR, J .)

(DR . S . RADHAKRISHNAN, J .)